



Decision

Matter of: OER Services, LLC

File: B-405273

Date: October 7, 2011

Ali Zaimi, for the protester.

John Matuszak, Esq., and Laura Arnolds, Esq., Department of the Navy, for the agency.

Paula A. Williams, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging agency's evaluation of proposals under safety factor is denied where the record reflects that the evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

OER Services, LLC, of Arlington Heights, Illinois protests the award of a contract to Federal Contracts Corporation (FCC) of Tampa, Florida under request for proposals (RFP) No. N40083-11-R-3007, issued by the Department of the Navy, Naval Facilities Engineering Command, for the rental of various types of construction equipment. The protester argues that the agency improperly evaluated its proposal as technically unacceptable.

We deny the protest.

The solicitation, which was set aside for competition among small business firms, contemplated the award of a fixed-price indefinite-delivery/indefinite-quantity contract for a base and 2 option years. As amended, the RFP provided for award to the offeror whose proposal represented the best value to the government. Proposals were to be evaluated on the basis of the following factors: (1) management and technical approach; (2) corporate experience; (3) past performance; (4) safety; and (5) price. RFP amend. 2, at 3. Under the evaluation scheme, the non-price factors were of equal weight and, when combined, were approximately equal to price. Id.

Offerors were advised that their proposals must be “precise, detailed, and complete,” RFP at 7, to allow the agency to evaluate them under the evaluation factors in the RFP. Offerors were further advised that an unacceptable rating under any non-price factor would render a technical proposal’s overall rating unacceptable; only those technical proposals found acceptable would be eligible for award. Id. at 13.

Of relevance to this protest, under the safety evaluation factor, the RFP provided that the agency would evaluate an offeror’s submission to determine whether the offeror has “consistently demonstrated a commitment to safety.” Id. at 8. More specifically, the solicitation stated:

1. Technical Approach for Safety (Prime): The contractor must describe the safety procedures you will follow when performing the requirements of [the performance work statement] . . .
2. Technical Approach for Safety (Sub-contractors): Describe the plan that the Offeror will implement to evaluate safety performance of potential subcontractors, as part of the selection process for all levels of subcontractors. Also, describe any innovative methods that the Offeror will employ to ensure and monitor safe work practices at all subcontractor levels.
3. Technical Approach for Safety (for Factor 3 projects submitted): For the relevant projects submitted for Factor 3 (Past performance), provide a narrative describing the safety program the offeror used. Describe unique items such as the high risk activities that were encountered and the measures that were taken to mitigate potential safety mishaps.
4. Experience Modification Rate: Submit experience modification worksheet which indicates the Experience Modification Rate (EMR) for the past three (3) years (obtainable from the offeror’s surety) which reflects actual versus anticipated losses. If the EMR for the last three (3) years cannot be provided, submit an explanation of the reasons why and provide a safety program narrative.¹

¹ A firm’s EMR is used to calculate its insurance premiums, and is based on the average amount of claims reported over a 3-year period. See National Council on Compensation Insurance website, available at www.ncci.com.

Id. at 8.

Proposals were received by the March 28, 2011 closing date. After the initial evaluation, the agency decided to conduct discussions with all offerors. The agency ultimately conducted two rounds of discussions with offerors, including OER.

In its initial proposal, OER submitted the following information for the safety evaluation factor:

1. OER Services follows the same Safety procedures as outlined & identified by the following Equipment Rental Firms. (Sunbelt Rentals, Hertz Equipment Rental, United Rentals, Metrolift, Central Crane, Imperial Crane, Royal Crane, LaGrange Crane, Gatwood Crane, NES Rentals). Each of these firms pride (sic) themselves in following all OSHA [Occupational Safety and Health Administration] & DOT [Department of Transportation] safety regulations when off-loading or picking up rental equipment.
2. (See Statement Above)
3. (same as statement #1 on this form)
4. Our current [EMR] is 1.0 as our firm has been in business since 9/16/09 without a single accident.

Agency Report (AR) exh. 3, Protester's Initial Technical Proposal at 13.

The agency concluded that the above response from OER failed to provide information required by the terms of the RFP, and that it therefore could not adequately evaluate OER's proposal under the safety evaluation factor. During the first round of discussions, the agency informed the protester that it should provide specific and full information so that the evaluators could "determine that the offeror has consistently demonstrated a commitment to safety and that the offeror plans to properly manage and implement safety procedures for itself and its subcontractors." Id. exh. 7, OER Discussion Letter at 2 (Apr. 1, 2011). As reflected in the record, in response to the agency's request for detailed and complete safety information, the protester's revised proposal merely restated the information quoted above. Id. exh. 8, OER's Revised Proposal (Apr. 16, 2011).

The evaluators determined that OER's proposal was unacceptable overall based, in part, on its rating under the safety evaluation factor. In this regard, the agency identified a deficiency in the protester's proposal as follows: "The offeror's safety proposal is lacking detailed information. Government determined this as a material

failure as safety can affect the successful performance of the contract.” Contracting Officer’s Statement at 4.

In the second round of discussions, the Navy again requested that OER provide “more detail especially about [its] specific safety program.” AR exh. 11, OER Discussion Letter at 2 (June 8, 2011). In its second proposal revision, OER responded that

OER Services and their network of equipment suppliers all follow the following Safety Standards:

1. All Equipment being rented all have the required updated OSHA/ANSI approved Annual Inspections Performed.
2. In addition to updated Annual Inspections, each piece of equipment is given the manufacturer recommended rental & maintenance inspection prior to delivery.
3. All Equipment is transported using DOT approved Safety standards, including [checking] of tires &/or chains . . .

Id. OER Second Revised Proposal at 2 (June 13, 2011). After evaluating the second revised proposals, OER’s rating under the safety evaluation factor remained unacceptable. The Navy eliminated OER’s proposal from further consideration, and made award to FCC. After receiving a debriefing, this protest followed.

DISCUSSION

The protester generally contends that the agency unreasonably rated its proposal as unacceptable under the safety evaluation factor. OER maintains that “it was not given a clear direction on exactly what information [the agency] was looking for in regards to requirements for safety measures” and that its proposal was “not reviewed at the same level as other firms.” Protester’s Comments at 1. OER also challenges the agency’s evaluation of FCC’s proposal under the safety factor.

In reviewing protests objecting to an agency’s technical evaluation, our role is limited to ensuring that the evaluation was reasonable and consistent with the terms of the solicitation. CMI Mgmt., Inc., B-402172, B-402172.2, Jan. 26, 2010, 2010 CPD ¶ 65 at 2. It is an offeror’s responsibility to submit an adequately written proposal that establishes its capability and the merits of its proposed technical approach in accordance with the evaluation terms of the solicitation. See Verizon Fed., Inc., B-293527, Mar. 26, 2004, 2004 CPD ¶ 186 at 4. The protester’s mere disagreement with the agency’s judgment does not establish that an evaluation was unreasonable. Akal Security, Inc., B-401469 et al., Sept. 10, 2009, 2009 CPD ¶ 183 at 3. Based on our review of the record, the agency’s finding that OER’s initial and revised proposals failed to adequately address the safety evaluation factor was reasonable and supports the agency’s decision to exclude OER’s proposal from further consideration.

Here, in order for a proposal to be evaluated as technically acceptable, the RFP required that an offeror provide detailed narratives that addressed each of the four identified elements of the safety evaluation factor. While OER may have taken a limited view as to what information was necessary to address the question of safety--the protester states that "safety is black and white" and "the rules and regulations have absolutely no gray area," *id.* at 1-2--we note that simply citing the applicable OSHA and/or ANSI rules or regulations in its proposal did not comport with the RFP's specific requirement for a detailed narrative describing the offeror's safety procedures for itself and its subcontractors, as well as the safety program and procedures employed by the offeror under similar projects it performed over the last 5 years. Because OER did not furnish all of the information required by the RFP, we have no basis to question the agency's determination that OER's proposal was technically unacceptable.

Moreover, during two rounds of discussions, the agency specifically questioned the protester with regard to its approach to managing and implementing safety procedures for itself and its subcontractors. Yet, it still failed to submit a response addressing the agency's concerns; indeed, OER provided essentially no information for the agency to evaluate regarding the firm's compliance with this evaluation factor. To the extent OER contends that the agency failed to inform OER of the level of detail sought by the agency during the two rounds of discussions, its contention is without merit. Agencies are not required to "spoon-feed" offerors during discussions, but rather need only lead offerors into the areas of their proposals that require amplification or revisions. Martin Elecs., Inc., AMTEC Corp., B-404197, et al., Jan. 19, 2011, 2011 CPD ¶ 25 at 6. The agency clearly advised OER during both rounds of discussions that OER needed to provide greater detail regarding its safety program.²

Finally, the protester challenges the agency's evaluation of FCC's proposal under the safety factor. In this regard, OER contends that FCC should have been found unacceptable since FCC failed to submit the safety plans for each of its subcontractors. OER's challenge is misplaced, however, because offerors were not required to submit a safety plan from each subcontractor that a firm intended to use during performance; rather, it merely required offerors to describe "the plan that the

² To the extent the protester contends that the evaluations were unequal because the "solicitation did not provide clear guidelines or criteria to be met in fulfilling its requirements" and that "[p]roviding clearly outlined requirements in the form of a checklist is one way to assure all bidding parties are evaluated in the same manner" Protester's Comments at 2, its challenge is one concerning the express terms of the solicitation, which is untimely at this juncture. Protests challenging apparent solicitation improprieties must be filed before the time set for receipt of initial proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2011).

offeror will implement to evaluate safety performance of potential subcontracts.” RFP at 8. Thus, we have no basis to conclude that the agency’s evaluation of FCC’s proposal was improper.

The protest is denied.

Lynn H. Gibson
General Counsel